SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1837

AN ACT

To repeal sections 142.028, 407.750, 407.751, 407.752, 407.850, 407.860, 407.870, 407.890, 407.892 and 407.893, RSMo, and to enact in lieu thereof four new sections relating to agriculture.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 142.028, 407.750, 407.751, 407.752, 407.850, 407.860, 407.870, 407.890, 407.892 and 407.893, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 142.028, 407.850, 407.860 and 407.870, to read as follows:

142.028. 1. As used in this section, the following terms mean:

- (1) "Fuel ethanol", one hundred ninety-eight proof ethanol denatured in conformity with the United States Bureau of Alcohol, Tobacco and Firearms' regulations and fermented and distilled in a facility whose principal (over fifty percent) feed stock is cereal grain or cereal grain by-products;
- (2) "Fuel ethanol blends", a mixture of ninety percent gasoline and ten percent fuel ethanol in which the gasoline portion of the blend or the finished blend meets the American Society for Testing and Materials specification number D-439;
- (3) "Missouri qualified fuel ethanol producer", any producer of fuel ethanol whose principal place of business and

facility for the fermentation and distillation of fuel ethanol is located within the state of Missouri and which has made formal application, posted a bond, and conformed to the requirements of this section.

- 2. The "Missouri Qualified Fuel Ethanol Producer Incentive Fund" is hereby created and subject to appropriations shall be used to provide economic subsidies to Missouri qualified fuel ethanol producers pursuant to this section. The director of the department of agriculture shall administer the fund pursuant to this section.
- A Missouri qualified fuel ethanol producer shall be eligible for a monthly grant from the fund, except that a Missouri qualified fuel ethanol producer shall only be eligible for the grant for a total of sixty months unless such producer during those sixty months failed, due to a lack of appropriations, to receive the full amount from the fund for which they were eligible, in which case such producers shall continue to be eliqible for up to twenty-four additional months or until they have received the maximum amount of funding for which they were eligible during the original sixty month time The amount of the grant is determined by calculating the period. estimated gallons of qualified fuel ethanol production to be produced from Missouri agricultural products for the succeeding calendar month, as certified by the department of agriculture, and applying such figure to the per-gallon incentive credit established in this subsection. Each Missouri qualified fuel ethanol producer shall be eligible for a total grant in any [calendar] <u>fiscal</u> year equal to twenty cents per gallon for the

first twelve and one-half million gallons of qualified fuel ethanol produced from Missouri agricultural products in the [calendar] fiscal year plus five cents per gallon for the next twelve and one-half million gallons of qualified fuel ethanol produced from Missouri agricultural products in the [calendar] fiscal year. All such qualified fuel ethanol produced by a Missouri qualified fuel ethanol producer in excess of twenty-five million gallons shall not be applied to the computation of a grant pursuant to this subsection. The department of agriculture shall pay all grants for a particular month by the fifteenth day after receipt and approval of the application described in subsection 4 of this section. If actual production of qualified fuel ethanol during a particular month either exceeds or is less than that estimated by a Missouri qualified fuel ethanol producer, the department of agriculture shall adjust the subsequent monthly grant by paying additional amount or subtracting the amount in deficiency by using the calculation described in this subsection.

- 4. In order for a Missouri qualified fuel ethanol producer to obtain a grant from the fund for a particular month, an application for such funds shall be received no later than fifteen days prior to the first day of the month for which the grant is sought. The application shall include:
- (1) The location of the Missouri qualified fuel ethanol producer;
- (2) The average number of citizens of Missouri employed by the Missouri qualified fuel ethanol producer in the preceding quarter, if applicable;

- (3) The number of bushels of Missouri agricultural commodities used by the Missouri qualified fuel ethanol producer in the production of fuel ethanol in the preceding quarter;
- (4) The number of gallons of qualified fuel ethanol the producer expects to manufacture during the month for which the grant is applied;
- (5) A copy of the qualified fuel ethanol producer license required pursuant to subsection 5 of this section, name and address of surety company, and amount of bond to be posted pursuant to subsection 5 of this section; and
- (6) Any other information deemed necessary by the department of agriculture to adequately ensure that such grants shall be made only to Missouri qualified fuel ethanol producers.
- 5. The director of the department of agriculture, in consultation with the department of revenue, shall promulgate rules and regulations necessary for the administration of the provisions of this section. The director shall also establish procedures for bonding Missouri qualified fuel ethanol producers. Each Missouri qualified fuel ethanol producer who attempts to obtain moneys pursuant to this section shall be bonded in an amount not to exceed the estimated maximum monthly grant to be issued to such Missouri qualified fuel ethanol producer.
- 6. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.
- 407.850. As used in sections 407.850 to 407.885, the following terms mean:

- (1) "Current model", a model listed in the wholesaler's, manufacturer's or distributor's current sales manual or any supplements thereto;
- (2) "Current net price", the price listed in the wholesaler's, manufacturer's or distributor's price list or catalogue in effect at the time the contract is canceled or discontinued, less any applicable trade and cash discounts;
- (3) "Inventory", [farm] equipment, implements, machinery, attachments and repair parts;
- (4) "Net cost", the price the retailer actually paid for the merchandise to the wholesaler, manufacturer or distributor, plus freight from the wholesaler's, manufacturer's or distributor's location to the dealer's location;
- (5) "Retailer", any person, firm or corporation engaged in the business of selling, repairing and retailing:
- (a) Farm implements, machinery, attachments or repair parts;
- (b) Industrial, maintenance and construction power equipment; or
- (c) Outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance; but shall not include retailers of petroleum and motor vehicles and related automotive care and replacement products normally sold by such retailers.
- 407.860. 1. The wholesaler, manufacturer or distributor shall repurchase that inventory previously purchased from him and held by the retailer at the date of termination of the contract. The provisions of sections 407.850 to 407.885 shall apply to the

transferee of such wholesaler, manufacturer or distributor if such transferee acquired substantially all of the assets of such wholesaler, manufacturer or distributor. The wholesaler, manufacturer or distributor shall pay one hundred percent of the net cost of all new, unsold, undamaged and complete [farm] equipment, implements, machinery, and attachments and ninety-five percent of the current net price of all new, unused and undamaged repair parts. The retailer shall pay the cost of transportation to the nearest warehouse maintained by the wholesaler, manufacturer, or distributor, or to a mutually agreeable site. The wholesaler, manufacturer or distributor shall pay the retailer five percent of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading. The wholesaler, manufacturer or distributor shall have the option of performing the handling, packing and loading in lieu of paying the five percent for these services. The retailer shall pay the cost of transportation to the nearest warehouse maintained by the wholesaler, manufacturer, or distributor, or to a mutually agreeable site.

- 2. Upon payment of the repurchase amount to the retailer, the title and right of possession to the repurchased inventory shall transfer to the wholesaler, manufacturer or distributor.
- 407.870. The provisions of sections 407.850 to 407.885 shall not require the repurchase from a retailer of:
- (1) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;
- (2) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer or

distributor, of title, free and clear of all claims, liens and encumbrances;

- (3) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;
- (4) Any <u>equipment</u>, implements, machinery, and attachments which are not in new, unused, undamaged, or complete condition;
- (5) Any repair parts which are not in new, unused, or undamaged condition;
- (6) Any <u>equipment</u>, implements, machinery or attachments which were purchased twenty-four months or more prior to notice of termination of the contract;
- (7) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;
- (8) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor unless such inventory was acquired from any source authorized or arranged by the manufacturer.
 - [407.750. Whenever any person, firm, or corporation engaged in the business of selling and repairing industrial, maintenance and construction power equipment enters into a written or parol contract whereby such retailer agrees to maintain a stock of parts or machines or equipment or attachments with any wholesaler, manufacturer, or distributor of industrial, maintenance and construction power equipment used for industrial, maintenance or construction applications and either such wholesaler, manufacturer, or distributor desires to cancel or discontinue the contract, such wholesaler, manufacturer, or distributor shall pay to such retailer, unless the retailer should desire to keep such merchandise, a sum equal to ninety percent of the net cost of all new, unused, undamaged and complete industrial, maintenance and construction power equipment used for industrial, maintenance and construction applications including transportation

charges which have been paid by such retailer, and ninety percent of the current net price on new, unused and undamaged repair parts at the price listed in the current price lists or catalogues, which parts had previously been purchased from such wholesaler, manufacturer, or distributor in the previous two years, and held by such retailer on the date of the cancellation of such contract. Any parts in a dealer's inventory for more than two years shall be returned for ninety percent of his original purchase cost. cost" means the price the retailer actually paid for the equipment. "Current net price" means the price listed in the manufacturer's, wholesaler's or distributor's price list or catalogue in effect on the date of termination, less any applicable trade or cash discounts. Upon the payment of the sum equal to ninety percent of the net cost of such equipment and ninety percent of the current net price on the repair parts, the title to such machinery and repair parts shall pass to the manufacturer, wholesaler or distributor making such payment, and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such equipment and repair parts. All payments required to be made under the provisions of this section must be made within ninety days after the return of the machinery or repair parts. After ninety days, all payments or allowances shall include interest at the rate stated in section 408.040, RSMo. The provisions of this section shall not require the repurchase from a retailer of:

- (1) Any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries;
- (2) Any repair part which is in a broken or damaged package;
- (3) Any single repair part which is priced as a set of two or more items;
- (4) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;
- (5) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of all claims, liens and encumbrances;
- (6) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;
- (7) Any implements, machinery, and attachments which are not in new, unused, undamaged, or complete condition;
 - (8) Any repair parts which are not in new,

- unused, or undamaged condition;
- (9) Any implements, machinery or attachments which were purchased twenty-four months or more prior to notice of termination of the contract;
- (10) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;
- (11) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor;
- (12) Any part that has been removed from an engine or short block or piece of equipment or any part that has been mounted or installed on an engine or on equipment.]
- [407.751. The provisions of section 407.750 shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler or distributor covering the return of equipment and repair parts. The retailer may elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to the remedy provided herein as to those equipment and repair parts not affected by the contract remedy.]
- [407.752. In the event that any manufacturer, wholesaler, or distributor of machinery and repair parts for industrial, maintenance and construction power equipment used for industrial, maintenance and construction applications, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as required by the provisions of section 407.750, such manufacturer, wholesaler, or distributor shall be liable in a civil action to the retailer for costs of litigation and attorney's fees and for one hundred percent of the net cost of such machinery, plus transportation charges which have been paid by the retailer and one hundred percent of the current net price of the repair parts.]
- [407.890. Whenever any person, firm, or corporation engaged in the business of selling and repairing outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, enters into a written or parol contract whereby such retailer agrees to maintain a stock of parts or machines or equipment or attachments with any wholesaler, manufacturer, or distributor of outdoor

power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, and either such wholesaler, manufacturer, or distributor desires to cancel or discontinue the contract, such wholesaler, manufacturer, or distributor shall pay to such retailer, unless the retailer should desire to keep such merchandise, a sum equal to ninety percent of the net cost of all new, unused, undamaged and complete outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, including transportation charges which have been paid by such retailer, and ninety percent of the current net price on new, unused and undamaged repair parts at the price listed in the current price lists or catalogues, which parts had previously been purchased from such wholesaler, manufacturer, or distributor in the previous two years, and held by such retailer on the date of the cancellation of such contract. Any parts in dealer's inventory for more than two years shall be returned for ninety percent of his original purchase "Net cost" means the price the retailer actually paid for the equipment. "Current net price" means the price listed in the manufacturer's, wholesaler's or distributor's price list or catalogue in effect on the date of termination, less any applicable trade or cash discounts. Upon the payment of the sum equal to ninety percent of the net cost of such equipment and ninety percent of the current net price on the repair parts, the title to such machinery and repair parts shall pass to the manufacturer, wholesaler or distributor making such payment, and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such equipment and repair parts. All payments required to be made under the provisions of this section must be made within ninety days after the return of the machinery or repair parts. After ninety days, all payments or allowances shall include interest at the rate stated in section 408.040, RSMo. The provisions of this section shall not require the repurchase from a retailer of:

- (1) Any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries;
- (2) Any repair part which is in a broken or damaged package;
- (3) Any single repair part which is priced as a set of two or more items;
- (4) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;
 - (5) Any inventory for which the retailer is

unable to furnish evidence, satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of all claims, liens and encumbrances;

- (6) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;
- (7) Any implements, machinery, and attachments which are not in new, unused, undamaged, or complete condition;
- (8) Any repair parts which are not in new, unused, or undamaged condition;
- (9) Any implements, machinery or attachments which were purchased twenty-four months or more prior to notice of termination of the contract;
- (10) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;
- (11) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor;
- (12) Any part that has been removed from an engine or short block or piece of equipment or any part that has been mounted or installed on an engine or on equipment.]
- [407.892. The provisions of section 407.890 shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler or distributor covering the return of equipment and repair parts. The retailer may elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to remedy provided herein as to those equipment and repair parts not affected by the contract remedy.]
- [407.893. In the event that any manufacturer, wholesaler, or distributor of machinery and repair parts for outdoor power equipment used for lawn, garden, golf course, landscaping or ground maintenance, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as required by the provisions of section 407.890, such manufacturer, wholesaler, or distributor shall be liable in a civil action to the retailer for costs of litigation and attorneys' fees and for one hundred percent of the net cost of such machinery, plus transportation charges which have been paid by the retailer and one hundred percent of the current net price of the repair parts.]